



UNITED FOUR WHEEL
DRIVE ASSOCIATIONS

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CQ448

NEPA Task Force
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September 19, 2002

Dear Task Force,

United Four Wheel Drive Associations is an international organization of four wheel drive enthusiasts dedicated to conservation of our public lands and enjoyment of the outdoors.

Question A(1): In preparing comments on NEPA analysis we still rely heavily on the availability of printed forms of documentation. Electronic forms are convenient but not readily available to many of our members without computers, without Internet access, or where electronic access is costly because of the remote locations in which they reside.

Question A(2): United has experienced the following challenges in using information technologies in the NEPA process, particularly with electronic forms of documentation.

(i) The Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) have issued NEPA documents in the past in which they began the comment period as of the date the analyses were available electronically. Beginning the comment period from the date the documentation is available electronically can cut 3 or more days off of the available time to comment for people who must wait for printed documents. In cases where the comment period is only 30 or 60 days losing 3 or more days is a significant loss of time.

For example, on December 8, 2000 the BLM issued its Notice of Availability and Comment Period for the Public Review of the Draft BLM National Off-Highway Vehicle (OHV) Management Strategy.¹ The Notice indicated that a "public review copy will be available by December 4, 2000 at BLM's website"² and therefore public comments would be accepted through the close of business, January 3, 2001 (thirty days from the date of availability of the electronic documentation). In an associated press release from the BLM dated 12/04/00, the BLM also announced availability of the electronic documentation and stated, "Paper copies of the document will be available from the

¹ 65 Fed. Reg. 77,039 (2000).

² Id.

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Bureau's State Offices and its Washington D.C., Office by December 8, 2000".³ Despite written acknowledgment by the BLM that printed copies of the documentation would not be available until 12/08/00, the public comment period was based on availability of the electronic forms thus shortening the 30-day comment period by 4 days for members of the public that had to rely on printed documentation.

(ii) Electronic documents, particularly when provided in a .pdf format or in html format, often times lack page numbers in which to cite to. In contrast, printed documents generated by an agency are universal in format and length and can easily be cited to. Inability to accurately cite to an environmental analysis is inconvenient at best and imprecise and confusing at worst. The effectiveness of comments on NEPA analyses are compromised when citations are lacking or when references to the document are confusing for the team that analyzes comments. NEPA procedures, such as requirements to study all feasible alternatives⁴, can be compromised when the comment analysis team cannot easily understand the references made to the NEPA documentation being commented upon. Therefore, when exploring opportunities for utilizing information technologies, particularly information in electronic form, attention must be paid to ensure that a system of page numbering is used consistently. An good example of consistent page numbering for electronic format is the method used by the Government Printing Office in their electronic versions of Federal Register Notices where F.R. page numbers are listed in brackets at appropriate locations throughout the electronic forms.

(iii) While electronic forms have many benefits, availability of electronic documentation relies solely on the dependability of the electronic server used by the agency and on the dependability of the electronic server accessed by the end user (reader of the document). If either of these service providers is inoperable the electronic documentation is unavailable and therefore the user is precluded for utilizing precious time during comment periods.

For example, electronic documents provided on Department of Interior (DOI) websites were unavailable for many weeks this past summer due to a court order issued to the DOI to suspend all electronic dissemination of information. Admittedly, this circumstance is isolated in nature, however it serves as an example of the tenuous availability of electronic forms of documentation. More often lack of availability of electronic documentation occurs because the electronic server used by the agency or by the end user is "down". Therefore, when exploring opportunities for utilizing information technologies, particularly information in electronic form, the Task Force must address these issues to safeguard against compromising public comment periods.

Question A(5): For the reasons stated above, the preferred method of receiving information about proposed actions and NEPA analyses and for receiving NEPA documents is paper. I do rely heavily upon electronic forms of access for convenience but do not trust this delivery method exclusively.

³ BLM Publishes Draft National Off-Highway Vehicle Strategy, Opens 30-Day Public Comment Period, The Bureau of Land Management News, December 4, 2000.
http://www.blm.gov/nhp/news/releases/pages/2000/pr001204_ohv.htm

⁴ See 40 C.F.R. §1502.14(a) for example.

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Question A(6): Despite my preference for printed materials, the availability of agency websites and e-mail addresses has been quite effective. The USFS has done a fine job of creating, and timely presenting, complex and major rulemaking projects on their web site. For example, see the USFS web pages pertaining to the Roadless Area Conservation Rule⁵ and the National Forest Management Act (NFMA) Planning Rule⁶.

Question C(1): Three types of issues lend themselves to programmatic review, particularly for broad Federal actions⁷: (a) adoption of official policy (such as rules and regulations); (b) adoption of formal plans (such as Land and Resource Management Plans by the USFS); and (c) adoption of programs.⁸

The Council on Environmental Quality (CEQ) implementing regulations for NEPA defines "broad federal actions" as actions occurring in the same general location; actions with common timing, impacts, alternatives, methods of implementation or subject matter; and actions in a particular stage of technological development.⁹

These three issues, policy, plan, and programs, provide opportunities to reduce or eliminate redundant and duplicative analysis while at the same time adequately consider the cumulative impact of such broad actions. It is important for the task force to establish consistent guidelines to determine the level of detail that may be needed if programmatic analysis is to be used as a basis for decision. One consideration of the amount of detail is to balance out the need for reducing or eliminating duplicative analysis with the need to provide enough detail to make the analysis meaningful, particularly when such programmatic analysis will be used later for site-specific project analyses.

"A programmatic NEPA document prepared for a series of interrelated proposals may need to include the *same level of detail as a project-specific NEPA document* if the programmatic document is to be used as the basis of the agency's decision for each proposal (emphasis added)."

"For policy or program direction a programmatic NEPA document looking at the broad environmental impacts of each alternative would be appropriate, using a *macro level of detail* and leaving a discussion of possible site-specific impacts to one or more subsequent NEPA documents (emphasis added)."

"For a series of proposals that share a common trait such as geographic area or technical basis, and common time frame, then preparing a programmatic NEPA document to address the potential impacts of the proposals together is a useful approach, allowing the

⁵ See <http://roadless.fs.fed.us/>

⁶ See <http://www.fs.fed.us/emc/nfma/index.htm>

⁷ 40 C.F.R. §1502.4(b).

⁸ 40 C.F.R. §1508.18(b)(1 - 3).

⁹ 40 C.F.R. §1502.4(c).

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agency to address similar issues only once and to effectively analyze cumulative impacts.”¹⁰

The task force should encourage agencies to focus on the “type” of decision that the agency expects to make in order to determine the proper balance of detail with the need to reduce or eliminate duplicative analysis. Care should be taken to ensure that programmatic analyses are not substituted for site-specific analyses or to ceremoniously fulfill NEPA requirements for site-specific projects. While microscopic detail should not be expected when such depth of analysis is not possible, agencies should not rely on programmatic analyses as a justification to forgo in-depth detail when such detail is pertinent for site-specific projects.

Question D: There should be criteria for determining what level of changes in conditions has occurred since the completion of the NEPA analyses that would trigger adjustment of management actions. Look at things like whether the changes in conditions were studied in the NEPA analyses and the extent of the changes predicted. The more or significant the changes in conditions the more likely subsequent NEPA analyses or adjustment of management actions should be imposed. Monitoring of changes in conditions should be based upon peer reviewed scientific evidence.

Question D(4): Cost (or lack of funding) is the single most important factor in determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation process. Because cost is such an important factor it should be studied as part of the NEPA analyses. Monitoring techniques should be tailored to the budget constraints at the time of the NEPA analyses.

Question F: Improvements are needed in the process agencies use to establish the level of scoping needed before determining whether an EIS or an EA is needed for broad federal actions, particularly broad policy and broad geographical actions.

For example, the USFS conducted an Environmental Analysis (EA) for the National Forest System Land and Resource Management Planning Final Rule.¹¹ In contrast, the USFS conducted an EIS for the Forest Service Roadless Area Conservation Final Rule.¹² Both of these rulemaking processes related to broad policy changes and broad geographical actions (impacting all National Forest units nationwide). The public needs to have a clearer understanding of how an agency determines whether to prepare an EA or proceed directly to an EIS for broad federal actions such as these.

¹⁰ Susan M. Smillie, Lucinda Low Swartz, *Effective Use of Programmatic Environmental Impact Statements*, Battelle Memorial Institute, Washington, D.C. (1998).

¹¹ *National Forest System Land and Resource Management Planning Final Rule Environmental Assessment and Civil Rights Impact Assessment*, U.S. Department of Agriculture, Forest Service, Washington Office, (2000).

¹² Forest Service Roadless Area Conservation Final Rule Final Environmental Impact Statement, U.S. Department of Agriculture, Forest Service, Washington Office (2000). See also: <http://roadless.fs.fed.us/documents/feis/>

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Thank you for the opportunity to participate in this important undertaking of the NEPA task force and for your time and attention in analyzing these comments.

Very truly yours,

A handwritten signature in cursive script that reads "Carla Boucher".

Carla Boucher, Esq.

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TO: NEPA Task Force

FROM: Carla Boucher

DATE: September 20, 2002

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